

REMARKS/ARGUMENTS

Reconsideration of the present application is hereby requested. Claims 2, 4-9, 11, 13-21, 26-36, and new claims 37, 38 are pending in the application.

Applicants have enclosed herewith two new claims in response to the non-final office action of October 30, 2006. It is felt that these claims overcome the various rejections provided by the Examiner. The Examiner has relied upon the Ou-Yang '577 reference in rejecting many of the claims as well as other basis for rejections. Applicants respectfully traverses all basis of the prior rejections. The Ou-Yang '577 reference is directed towards the use of a "heat or hot fill", see col. 1, lines 33-35, (not a retort process) package and closure which thereby allows the use of a polymeric foam material as the seal. In the abstract, background of the invention, summary (see col. 1, lines 44-45), detailed description (see col. 2, lines 4, 5 and 10-12 and 29-35), and claims (see col. 4, line 46-48 of Independent claim 1 subsection (a)) of the Ou-Yang '577 reference, the liner has "a layer of compressible polymeric foam". This foam material is unsuitable however for a retort process as in the Applicants' present invention due to the temperatures involved and issues of expansion of the foam and air material during the process. The '577 reference is specifically directed towards Polymeric Foamed Liners which are taught as being polymers and copolymers of olefins for use in heated liquid fill, not heating after filling and in no way teaches a combination of the material set forth in the presently pending claims. The Ou-Yang '577 is directed towards the use of paper or foam as a first layer in a seal with a pressure sensitive adhesive as a second layer and is specifically directed at an adequate pressure sensitive adhesive for use in such operations.

This reference further teaches against using any type of heating operation as the adhesive necessary for bonding of the materials is pressure activated, not heat activated and would necessarily fail at positive pressure application. (“Because the adhesive of the innerseal is activated by pressure, expensive heating equipment is not required.”) (see col. 6, lines 34-36). Further none of the references teach the use a combination of materials such as rubber and polypropylene as variously set forth. For the reasons set forth, the ‘577 reference should be removed from consideration altogether because the reference is directed specifically to a foamed structured liner for a hot fill process unlike the present invention.

35 U.S.C. § 112 Rejection of Claims

The examiner has rejected claims 28 through 36 under 35 U.S.C. § 112 as being indefinite. Applicants’ attorney has amended claim 28 to more clearly set forth that the liner being made of “at least a portion of thermoset material”. Concerning claim 8, Applicants’ attorney respectfully requests withdrawal of the rejection of claims 28-36 under 35 U.S.C. § 112.

35 U.S.C. § 102 Rejection of Claims

The Examiner has rejected claims 28 and 31 under 35 U.S.C. § 102(b) as being anticipated by Ou-Yang ‘577. Applicants’ attorney respectfully traverses this ground of rejection.

The Applicants’ liner in claim 28 is a resiliently compressible material having at least a portion of a thermoset material in combination with a thermoplastic material. As previously set forth, the liner of the ‘577 reference includes a plurality of layers. “The

layer of polymeric foam 12 must be compressible so that it can conform to the rim or lip of the container” (see col. 2, lines 4 and 5). The “layer of polymeric film 14 have a high melting temperature, good gas impermeability, and good chemical resistance.” (see col. 2, lines 37-39) The ‘577 reference specifically states that the single layer 12 (polymeric foam) is the only compressible material of a multilayer liner and thus does not teach a combination of compressible materials such as thermoset material and thermoplastic material as variously set forth. Also, the Ou-Yang ‘577 reference discloses the liner layer 12 being “a layer of compressible polymeric foam”. This foam material is unsuitable for a retort process as in the Applicants’ present invention. Likewise, since claim 31 depend from the independent claim cited above this claim is likewise not anticipated by Ou-Yang ‘577, and it is respectfully requested that the rejection of all claims under 35 U.S.C. § 102 be withdrawn.

The Examiner has rejected claims 4 and 26 under 35 U.S.C. § 102(b) as being anticipated by Ou-Yang ‘577. Applicants’ attorney respectfully traverses this ground of rejection. The ‘577 reference is directed towards a foamed liner which is unsuitable for utilization in retort processing due to the expansion of the seal and materials used. Further, the use of such foamed liner teaches away from the combination of the seal material presently described in that nothing within the ‘577 reference discloses the combination of materials which can withstand the temperatures and positive pressures, not negative pressures of a heat fill of ‘577, of retort processing and in particular utilization of the rubber and thermoplastic materials variously set forth. Accordingly, there is no anticipation of independent claim 26 and depending claim 4 and it is

respectfully requested that the rejection of all claims under 35 U.S.C. § 102 be withdrawn.

35 U.S.C. § 103 Rejection of Claims

The Examiner has rejected claims 2, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Ou-Yang '577 in view of Markovich et al. (US 5, 723, 507).

Applicants' attorney respectfully traverses this ground of rejection.

The Examiner has further cited to the Markovich '507 reference as aiding in the lack of teaching or suggestion not found in the '577 reference in the rejection of claims 2, 29 and 30. However, the '507 reference is again directed towards Foamed Gaskets which are unsuitable for utilization in retort processing due to the expansion of the seal and materials used. Further, the use of such Foamed Gaskets teaches away from the combination of the seal material presently described in that nothing within the '507 reference discloses the combination of materials which can withstand the temperatures and positive pressures (not negative pressures of a heat fill of '577) of retort processing and in particular utilization of the thermoset and thermoplastic materials variously set forth.

The Examiner has rejected claims 5-8, 17-20, and 32-35 under 35 U.S.C. § 103(a) as being unpatentable over Ou-Yang '577 in view of Montgomery et al. (US 5, 009, 323). Applicants' attorney respectfully traverses this ground of rejection.

For all the same reasons as set forth above, Applicants' attorney submits that claims 5-8 and 32-35 as not properly rejected as obvious under 35 U.S.C. § 103(a).

Applicants submit that the combination, including the liner structure of the present invention is not taught or suggested by the combination of references as applied by the Examiner. Thus, even though '323 reference may teach a tamper indicating closure, '323 does not correct the deficiencies of Ou-Yang '577 in teaching a foamed liner which is not capable of being subjected to the retort processing of the present invention (non-heat fill).

The Examiner has rejected claims 9, 21, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Ou-Yang '577 in view of Kelly (US 6, 202, 871). Applicants' attorney respectfully traverses this ground of rejection.

For all the same reasons as set forth above, Applicants' attorney submits that claims 9 and 36 are not properly rejected. The '577 reference does not include the liner of the present invention structured to be sterilized in high pressured overheated water bath retort process and thus as the exterior surface of the package is heated, the package contents are heated and the internal pressure increases, unlike retort filling. The hot fill liner of the '577 reference does not teach or suggest any retort bath processes in which the property of the liner functions to withstand the external to internal temperatures and the positive pressure in combination with the closure having ventilation slits.

Accordingly, there is no motivation or suggestion to modify the references or to combine the two reference teachings as the Examiner has done in the instant office action.

The Examiner has rejected claims 11-16 and 27 under 35 U.S.C. § 103(a) as being unpatentable over Ou-Yang '577. Applicants' attorney respectfully traverses this ground of rejection.

The '577 reference fails to teach the use a combination of materials such as rubber and polypropylene as variously set forth in claim 27. Foam structure is used in one layer of the liner in reference '577 and is unsuitable however for a retort process as in the applicants' present invention due to the temperatures involved and issues of expansion of the foam and air material during the process.

The presently pending independent claims 26, 27, 28, 37, and 38 set forth a liner material which rests within a closure and which can maintain positive pressure on the peelable seal when the container goes through a positive pressure cycle such as retort processing. The materials referred to by the Examiner in all the cited references, the '577, '507, Montgomery '323, and Kelly '871, teach materials which are not suitable for use in such environments and which do not maintain seal integrity as do the presently claimed materials. None of the references suggested by the Examiner have a peelable seal on which positive pressure must be maintained by the liner during retort processing as the internal container pressure substantially increases and may degrade such seal interface. The over pressure of the package during the retort process of the present invention prevents water seepage between the liner and the seal when the pack is submerged. Foam structure of a liner as can be found in reference '577 may severely distort and break the pack seal and may result in water getting trapped below the foam and above the foil. This trapped water may mold because the water may be cooling water and not sterile. The materials set forth maintain such contact as presently claimed in combinations not taught or suggested by any of the references cited. It is felt that the dependent claims of these independent claims are also allowable as significant aspects of

the claimed structure are not taught or suggested by any reference relied upon by the Examiner.

Applicants' attorney has added two independent claims 37 and 38 in the application. Independent claim 37 more clearly set forth that the liner is a non-foamed structure. Claim 38 further defines the liner to be free from foaming agents as stated in the specification (page 9, lines 1-8). Thus, neither claim 37 or claim 38 is anticipated by the Uo-Yang '577 reference, '577 clearly contradicts the liner being non-foamed and constructed of a combination of materials such as rubber and polypropylene as variously set forth. Also, Uo-Yang '577, either alone or in combination with the cited references, has no motivation or suggestion to modify the references or to combine to make obvious independent claims 37 and 38.

The Examiner has noted several other references as being of interest but not relied upon. Applicants have reviewed these prior art references and have determined that none of these references add nor disclose teachings more relevant than the references which have been previously discussed herein. Therefore, further discussion of these additional references does not appear to be warranted.

Applicants' urge that the instant application is now in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicants' Attorney would appreciate a call at (502) 584-1135 to discuss such remaining issues.

Title: Closure for Retort Process Container
Having a Peelable Seal
Serial No.: 10/026,161
Dkt. No.: CG#1049

Respectfully submitted,

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